

APPENDIX

IN THE DISTRICT COURT OF THE UNITED STATES,
NORTHERN DISTRICT OF ILLINOIS, EASTERN
DIVISION

Luellen Railway Artillery, Inc., *v.* The Pullman
Company, in equity No. 3589

MEMORANDUM

All that the Government grants to a patentee and protects is the power to exclude others from making, using, and vending, during the grant of seventeen years. (*Crown Co. v. Nye Tool Works*, 261 U. S. 24, 34; *Continental Paper Bag Co. v. Eastern Paper Bag Co.*, 210 U. S. 405.)

The Government in the exercise of the power of eminent domain may take for public use all or a part of the right conferred by the patent by making provision for just compensation. (*Crozier v. Krupp*, 224 U. S. 290.)

When the Government thus appropriates to its use the right conferred by a patent, or a part thereof, and exercises it through one who is manufacturing for the United States, the one so manufacturing acts under the protection of the right theretofore appropriated. In such a case there can be no infringement by the manufacturer within the meaning of Section 4921, R. S. The profits recoverable by patentee under Section 4921, R. S., are not necessarily all the profits realized by the in-

fringing manufacturer on his product; they are the profits created by the use of the patentable part or feature. (*Westinghouse Co. v. Wagner Mfg. Co.*, 225 U. S. 604, 615; *Garretson v. Clark*, 111 U. S. 120.)

When the Government makes a contract which involves the manufacture or use for Government purposes of a patented invention with one who is not the patentee, it must be assumed that it was within the contemplation of the parties that the Government has appropriated to its own use the right granted by the patent, or such portion thereof as was necessary for the purposes of the contract, and that the contract was framed on that basis. Any other assumption involves an imputation of bad faith and dereliction of duty to those acting for the Government.

The Act of July 1, 1918 (40 Stat. 704), provides for entire compensation for the right appropriated by the Government, and is, therefore, valid. (*Crozier v. Krupp*, *supra*.)

The bill is dismissed for want of jurisdiction.

(Signed) J. H. WILKERSON,
United States District Judge.

16 JUNE, 1924.

